

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

AMEL WILLIAM DALLUGE,
Petitioner,
vs.
STATE OF WASHINGTON,
Respondent.

NO. CV-07-055-LRS

ORDER DISMISSING PETITION FOR LACK
OF JURISDICTION

BEFORE THE COURT are Petitioner's First Amended Petition (Ct. Rec. 8) and Memorandum (Ct. Rec. 9). Petitioner, a prisoner currently housed at the Washington Correction Center, is proceeding pro se and in forma pauperis; Respondent has not been served. By Order filed March 9, 2007, the court advised Petitioner of the deficiencies of his petition and directed him to amend. After review of Petitioner's submissions, however, the court finds he has failed to remedy the deficiencies of the initial petition.

Petitioner asserts that without a declination hearing in 1997, he was tried as an adult. He was charged with two counts of Second Degree Rape, one count of Third Degree Rape and one count of Third Degree Rape by Complicity. A jury found him guilty of Third Degree

1 Rape and Third Degree Rape by Complicity.¹ He was initially sentenced
2 to 14 months incarceration, but was re-sentenced to 29 months after
3 the State successfully appealed the original sentence. Petitioner's
4 cross-appeal of his conviction was not successful. See State v.
5 Dalluge, 98 Wash. App. 1016 (2000) (unpublished opinion). A subsequent
6 appeal of his sentence was also unsuccessful. State v. Dalluge, 111
7 Wash. App. 1014 (2002) (unpublished opinion).

8 Nevertheless, Petitioner successfully pursued a Personal
9 Restraint Petition. See In re Dalluge, 152 Wash.2d 772, 110 P.3d 279
10 (2004). The Washington State Supreme Court found the trial court
11 erred in failing to remand to the juvenile court after the state
12 amended the charging information. The State Supreme Court remanded to
13 the Superior Court for a "de novo decline hearing" under Dillenburg v.
14 Maxwell, 70 Wash.2d 331, 355-56, 413 P.2d 940, 422 P.2d 783 (1966).
15 Petitioner complains this "decline hearing" has been "up in the air"
16 for the past two and a half years and asks this federal court to
17 intervene to require the decline hearing.

18 Petitioner then appears to be alleging a "de novo decline
19 hearing" would violate his equal protection rights under the
20 Fourteenth Amendment. He contends the "acquitted" charges of Second
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22 'The court takes judicial notice of the fact a separate jury
23 convicted Mr. Dalluge of second degree burglary, second degree theft,
24 and three counts of vehicle prowling in 1998. See State v. Dalluge, 96
25 Wash. App. 1069 (1999) (unpublished opinion). Judicial notice may be
26 taken of court records. *Valerio v. Boise Cascade Corp.*, 80 F.R.D.
27 626, 635 n.1 (N.D. Cal. 1978), *aff'd*, 645 F.2d 699 (9th Cir. 1981).

1 Degree Rape are being used to decline him in violation of Double
2 Jeopardy. He further complains these "in the air" convictions are
3 being used to enhance subsequent sentences. Petitioner states he is
4 "now turn[ing] to this court for answers and guidance."

5 A federal habeas court, however, is not an advisory court, U.S.
6 Const. Art. III, § 2 (extending federal judicial power only to "cases"
7 and "controversies"). As stated in the court's previous Order, it is
8 a jurisdictional prerequisite that a section 2254 petitioner be in
9 custody at the time his section 2254 petition is filed. 28 U.S.C. §
10 2254; *Maleng v. Cook*, 490 U.S. 488, 492-93 (1989); *Feldman v. Perrill*,
11 902 F.2d 1445, 1448-49 (9th Cir. 1990). Absent exceptional
12 circumstances, a federal court will not intervene in ongoing state
13 criminal proceedings. See *Younger v. Harris*, 401 U.S. 37, 40 (1971).

14 This court lacks jurisdiction to consider any direct challenge to
15 Mr. Dalluge's 1997 Grant County convictions for Third Degree Rape and
16 Third Degree Rape by Complicity as that sentence has either expired,
17 or the conviction has been remanded and criminal proceedings are still
18 pending. See *Maleng*, 490 U.S. at 493; *Feldman*, 902 F.2d at 1448-49.
19 To the extent current criminal charges are pending or Petitioner was
20 recently convicted, a challenge to the possible use of the 1997 Grant
21 County convictions are premature. See *Younger*, 401 U.S. at 40.

22 Petitioner fails to identify on the petition form the conviction
23 for which he is currently incarcerated. Also, he does not assert he
24 has sought relief in the Superior Court, Court of Appeals, or the
25 Washington State Supreme Court regarding the failure to conduct a
26 decline hearing and the impact of this on subsequent criminal
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1 proceedings.

2 In addition, Petitioner continues to name an improper party as
3 Respondent. A petitioner for habeas corpus relief must name the state
4 officer having custody of him as the respondent to the petition. Rule
5 2(a), Rules Governing Section 2254 Cases in the United States District
6 Courts; Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th
7 Cir. 1994). This person typically is the warden of the facility in
8 which the petitioner is incarcerated. Brittingham v. United States,
9 982 F.2d 378, 379 (9th Cir. 1992). Failure to name the petitioner's
10 custodian as a respondent has deprived this court of personal
11 jurisdiction. Id.; Dunne v. Henman, 875 F.2d 244, 249 (9th Cir.
12 1989). Accordingly, **IT IS ORDERED** the First Amended Petition is
13 **DISMISSED without prejudice** for lack of jurisdiction.

14 **IT IS SO ORDERED.** The District Court Executive is directed to
15 enter this Order, enter judgment, forward copies to Petitioner and
16 close the file.

17 **DATED** this 24th day of May, 2007.

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19 s/Lonny R. Suko

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LONNY R. SUKO
21 UNITED STATES DISTRICT JUDGE
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